

U.S. Application No. 10/789,786 Examiner Paul R. Durand Art Unit 3721
Response to April 5, 2005 Office Action

RESPONSE

In response to the Office Action dated April 5, 2005 (hereinafter referred to as the "Office Action"), Assignee respectfully requests reconsideration based on the above amendments and the following remarks. Assignee respectfully submits that all pending claims (claims 1-11 and 19-23) are in condition for allowance.

In the Office Action, the United States Patent and Trademark Office (the "Office") treated the election of species 1 as an election without traverse, objected to informalities in claims 1-11, rejected claims 1-11 and 19 under 35 U.S.C. § 102(b) as being anticipated by *Iannone* (U.S. Patent No. 4,315,551), and rejected claims 2-10 under 35 U.S.C. § 103(a) as being unpatentable over *Iannone*. The Assignee amends the claims to overcome the objection. Further, the Assignee shows that the pending claims are not fully disclosed in the cited reference nor are the pending claims anticipated, nor obviated, by the cited reference. Thus, the Assignee respectfully submits that the pending claims (claims 1-11, 19, and new claims 20-23) are ready for allowance.

Claim Informalities:

Claims 1-11 were objected to for informalities. Assignee respectfully takes note of these informalities and submits that the above amendments overcome the cited informalities. Consequently, Assignee respectfully requests Examiner Durand to remove his objection to claims 1-11.

§102 Rejection – claims 1, 11 and 19:

The Office rejected independent claims 1, 11, and 19 under 35 U.S.C. § 102(b) as being anticipated by *Iannone* (U.S. Patent No. 4,315,551). A claim is anticipated only if each and every element is found in a single prior art reference. See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). See also DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter "M.P.E.P."). As the Assignee shows, however, the reference to *Iannone*

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fails to include every element of the pending claims. The reference to *Iannone*, then, does not anticipate this invention, and Assignee respectfully requests that Examiner Durand remove the 35 U.S.C. § 102 (b) rejection of claims 1, 11, and 19.

Iannone does not anticipate the claimed subject matter. Independent claims 1 and 19 claim an apparatus or a method that includes an apparatus that has a body and a driver sleeve such that when the driver sleeve is mated with the body, the driver sleeve extends to an open distal end of the body. Claims 1 and 19 are reproduced below:

[c01] A driver cap assembly, comprising:

a body having a closed proximal end, an elongated shank, and an open distal end, wherein a first portion of the closed proximal end flares outward from a proximal end of the elongated shank towards a second portion of the closed proximal end, and wherein an interior of the elongated shank and the open distal end comprise a longitudinal bore, the longitudinal bore having an interior wall defining a longitudinal axis of the body; and

a driver sleeve having a first end, a second end, and a longitudinally extending shank from the first end towards the second end, an exterior surface of the longitudinally extending shank having a complimentary shape to mate with an interior surface of the longitudinal bore of the tubular body such that when the exterior surface is mated with the interior surface, the longitudinally extending shank extends to the open distal end of the body, and the second end having a driver sleeve longitudinal bore, an interior of the driver sleeve longitudinal bore adapted to fit about a proximal end of a shafted body.

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[c19] A method comprising:

positioning a driver cap assembly over a proximal end of a shafted body, comprising:

a body having a closed proximal end, an elongated shank, and an open distal end, wherein a first portion of the closed proximal end flares outward from a proximal end of the elongated shank towards a second portion of the closed proximal end, and wherein an interior of the elongated shank and the open distal end comprise a longitudinal bore, the longitudinal bore having an interior wall defining a longitudinal axis of the body,

a driver sleeve having a first end, a second end, and a longitudinally extending shank from the first end towards the second end, *an exterior surface of the longitudinally extending shank having a complimentary shape to mate with an interior surface of the longitudinal bore of the tubular body such that when the exterior surface is mated with the interior surface, the longitudinally extending shank extends to the open distal end of the body, and the second end having a driver sleeve longitudinal bore*, an interior of the driver sleeve longitudinal bore adapted to fit about a proximal end of a shafted body; and

applying a force to the proximal end of the driver assembly such that a distal end of the shafted body is driven into a surface.

U.S. Patent Application No. 10/789,786, claims 1 and 19 (emphasis added by Assignee).

Iannone does not disclose or suggest these claim elements. *Iannone* describes a rod driver 20 having a boss 42 with a lowermost end 50 located with a bore 30 of the driver head such that the bore 30 is a blind-ended bore with a concave blind end with an aft end 70 of the driver head 40 remote from the boss 42. See, U.S. Patent No. 4,315,551, col. 2, line 50 thru col. 3, line 34 and FIG. 2. Consequently, *Iannone* fails to even remotely describe or suggest *a driver sleeve that mates with a body such that the driver sleeve extends to an open distal end of the body*. Rather, *Iannone* discloses:

A hand-held rod driver 20 is shown in the Figures, and is the subject of the present disclosure. As shown, the driver 20 includes a tubular body 22 having a fore end 26 and an aft end 28 and a bore 30 defined axially thereof. The bore 30 has a diameter greater than the diameter of the rod 10 so that any expected size rod can be received within the bore 30 in a free sliding accommodation. Knurling 32 and 34 is located on the outside surface of the tubular body for providing a secure grip. Preferably, the

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bands of knurling are each four inches wide and are equidistant from the fore and aft ends of the body.

A driver head is affixed to the aft end of the body, and has an outer diameter essentially matching the outer diameter of the tubular body. One embodiment of the device is shown in FIG. 2, and includes a head 40 which has a boss 42 having external threads 44 defined thereon. The end of the bore 30 adjacent the aft end of the body 22 has internal threads 46 defined on the inner surface 48 thereof for cooperable association with the threads 44 of the head boss. The head is thus threadably attached to the body in the FIG. 2 embodiment.

The boss 42 has a lowermost end 50 which is located within the bore 30 to close off that bore. A parabolic cupola 60 is defined in the boss to open into the bore 30. The bore 30 is thus a blind-ended bore with a concave blind end. The cupola has a heel 62 which is in axial alignment with the longitudinal centerline of the bore so that the cupola has an inner surface 64 which is symmetric with respect to that centerline. The cupola intersects the surface of the boss lowermost end, and is upwardly convergent therefrom. Thus, a continuously converging bore end is defined by the cupola forming cutout portion of the driving head.

The aft end of the rod 10 is contacted by the cupola inner surface 64 during an embedding process. The rod 10 is formed of a deformable material which is deformed from the initially planar shape shown for the aft end thereof in FIG. 1 to the bullet shape shown for the aft end 28' in FIG. 3. The planar end 28 has a circular periphery which corresponds to longitudinal surface L of the rod, and this periphery contacts the inner surface of the cupola during the driving process to force the rod aft end into the cupola. The metal of the rod deforms due to the malleable nature thereof and due to the repeated impacts delivered thereto. However, the cupola serves as a guide to form the deformed rod into a shape which is not only aesthetically pleasing, but which will not inhibit further operation of the head during the driving process. The final configuration of the aft end 28' thus conforms to the shape of the cupola and is accordingly a truncated paraboloid, and can be described, as above, as being bullet-shaped. The end 28' is truncated because the rod 10 contacts the cupola inner surface 64 at a location spaced from the heel 62. The amount of spacing between the heel 62 and the rod aft end is determined by the outer diameter of the rod and the amount of deformation undergone by the rod during the driving process.

The driver head 40 includes an aft end 70 located remote from the boss 42 which is conical in shape. The apex 72 of the cone-shaped end 70 is located within the head 40 so that the cone is inwardly convergent of the head 40. The preferred angle of the cone is 10 degree with respect to wall 74 of the head 40.

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U.S. Patent No. 4,315,551, col. 2, line 50 thru col. 3, line 34 (emphasis added by Assignee).

For these reasons and others, *Iannone*, then, cannot anticipate independent claims 1 and 19. And because claim 11 depends upon claim 1, *Iannone* cannot anticipate claim 11. Accordingly, Assignee respectfully requests Examiner Durand to withdraw the §102 rejection of claims 1, 11, and 19 and to allow these claims.

§103 Rejection – claims 2-10:

The Office rejected claims 2-10 under 35 U.S.C. § 103(a) as being unpatentable over *Iannone*. If the Office wishes to establish a *prima facia* case of obviousness, three criteria must be met: 1) combining prior art requires “some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill”; 2) there must be a reasonable expectation of success; and 3) all the claimed limitations must be taught or suggested by the prior art. DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition) (hereinafter “M.P.E.P.”). As the Assignee shows, however, *Iannone* fails to suggest the claimed subject matter of claims 2-10 which depend upon independent claim 1. The Assignee, then, respectfully requests allowance of claims 2-10.

As discussed above, *Iannone* does not teach or suggest claims 2-10. *Iannone* describes a rod driver 20 having a boss 42 with a lowermost end 50 located with a bore 30 of the driver head such that the bore 30 is a blind-ended bore with a concave blind end with an aft end 70 of the driver head 40 remote from the boss 42. See, U.S. Patent No. 4,315,551, col. 2, line 50 thru col. 3, line 34 and FIG. 2. Consequently, *Iannone* fails to even remotely describe or suggest a *driver sleeve that mates with a body such that the driver sleeve extends to an open distal end of the body* as claimed by independent claim 1. Because claims 2-10 depend upon claim 1, *Iannone* does not suggest (or otherwise disclose) these claims. The Assignee, then, respectfully asks Examiner Durand to remove the § 103 rejection and to allow claims 2-10.

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CONCLUSION

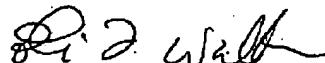
All of the objections and rejections have been overcome. The pending claims 1-11 and 19-23 are not anticipated nor are they obviated by the cited patent (*Iannone*). Because the pending claims are patentably distinguishable, the Assignee respectfully requests that a Notice of Allowability issue.

AUTHORIZATION FOR PAYMENT OF FEES

If there are any other fees due in connection with the filing of this response, please charge the fees to the credit card on file. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to the credit card on file.

If the Office has any questions, the Office is invited to contact the undersigned at (757) 253-5729 or bambi@wzpatents.com.

Respectfully submitted,



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